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STATE OF WASHINGTON  
OFFICE OF ADMINISTRATIVE HEARINGS

SEATTLE-OAH

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December 6, 2014

Parent



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In re: **Central Valley School District**  
**Special Education Cause No. 2014-SE-0008**

Dear Parties:

Enclosed please find the Findings of Fact, Conclusions of Law, and Final Order in the above-referenced matter. This completes the administrative process regarding this case. Pursuant to 20 USC 1415(i) (Individuals with Disabilities Education Act) this matter may be further appealed to either a federal or state court of law.

After mailing of this Order, the file (including the exhibits) will be closed and sent to the Office of Superintendent of Public Instruction (OSPI). If you have any questions regarding this process, please contact Administrative Resource Services at OSPI at (360) 725-6133.

Sincerely,

MATTHEW D. WACKER  
Administrative Law Judge

cc: Administrative Resource Services, OSPI  
Matthew D. Wacker, Senior ALJ, OAH/OSPI Caseload Coordinator

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SUPERINTENDENT OF PUBLIC INSTRUCTION  
ADMINISTRATIVE RESOURCE SERVICES

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DEC 06 2014

STATE OF WASHINGTON  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION **SEATTLE-OAH**

IN THE MATTER OF:

CENTRAL VALLEY SCHOOL DISTRICT

SPECIAL EDUCATION  
CAUSE NO. 2014-SE-0008

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND FINAL ORDER**

A hearing in the above-entitled matter was held before Administrative Law Judge (ALJ) Matthew D. Wacker in Spokane Valley, Washington, over four days on October 3, and 6-8, 2014. The Parent of the Student whose education is at issue<sup>1</sup> appeared and was represented by Kammi Mencke Smith, attorney at law. The Central Valley School District (District) was represented by Gregory Stevens, attorney at law. Also appearing for the District was Gretchen Newell, middle school learning specialist. The following is hereby entered:

**STATEMENT OF THE CASE**

Procedural History

The Parent filed a due process hearing request (hereafter the Complaint) with the Office of Superintendent of Public Instruction (OSPI) on February 20, 2014. OSPI assigned the Complaint Cause No. 2014-SE-0008, and forwarded it to the Office of Administrative Hearings (OAH), where the matter was assigned to ALJ Matthew D. Wacker. A Scheduling Notice was entered on February 21, 2014, setting a prehearing conference for March 24, 2014. Prehearing conferences were held on March 24, April 18, 29, June 5 and 6, 2014. Prehearing Orders were entered on April 2, May 13, 28, and June 9, 2014.

Due Date for Written Decision

Pursuant to prior order and by agreement of the parties, the due date for a written decision in the above matter is thirty (30) calendar days from the close of record. The parties agreed to file post-hearing closing briefs postmarked no later than November 7, 2014, upon which date the record would close. Thirty (30) calendar days from November 7, 2014, is December 7, 2014. Therefore, the due date for a written decision in the above matter is **December 7, 2014**.

**EVIDENCE RELIED UPON**

The following exhibits were admitted into evidence:

<sup>1</sup> In the interests of preserving the family's privacy, this decision does not identify the parents or student by name. They are referred to herein as "Parent" and "Student."

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Parent's Exhibits:

P2-P4, P6-P17, P19-22, P24, P26-P27, P29-P30, P33-P36, P38, P42, P51, P59, P62, P64, P65A, P67, P69-P70, P74, P76-P77, P79-P81, P84-P85, P86, p. 1 only, P87-P90, P96-P98, P102, P104-P108, P112-P114, P119-P122, P124-P125, P127-P128, P130, P132-P134, P137-P138, and P144.

District Exhibits:

D1-D2, D4-D13, D19-D22, D24-D33, D35-D50, and D53-D62.

The following witnesses testified under oath. They are listed in order of their appearance:

The Student;

Julie Causton, Ph.D.;

Lisa Tupling, District general education teacher;

Starla Fey, District general education teacher;

Keith Wacholz, District resource room teacher;

David Carpenter, District resource room teacher;

Tina Jordan, District instructional aide or paraprofessional;

Student 1,<sup>2</sup> District student;

Student 2, District student;

██████████ parent of students who have attended school in the District with the Student;

Student 3; District student;

The Parent;

Roger Campbell, District resource room teacher;

Julie Jones, District resource room teacher;

Pete Whipple, District general education teacher;

Amber Haase, District general education teacher;

Susan Graham, instructional aide or paraprofessional;

Maureen Weisbeck, District middle school assistant principal;

Kathy Dochan, District extended resource room teacher;

Tina Baker, District extended resource room teacher;

Beth Stultz, District special education teacher;

Heidi Farr, District speech-language pathologist;

Heather Chronister, District special education teacher;

Elizabeth Wordsworth, District general education teacher;

Matt Johnson, District general education teacher;

Melissa Danelo, District special services secondary coordinator;

Gretchen Newell, District middle school specialist;

██████████ parent of student attending District's University High School.

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<sup>2</sup> Several minor students who have attended school in the District with the Student testified at the due process hearing. In order to preserve their privacy they are referred to herein as Students 1, 2, and 3. In the event of an appeal, a name-key identifying these witnesses by name is included with the physical file.

## ISSUES AND REMEDIES

The issues for the due process hearing under Cause Number 2014-SE-0008 are as follows:

- a. Whether the District violated the Individuals with Disabilities Education Act (IDEA) and denied the Student a free appropriate public education (FAPE) beginning with the 2013-14 school year by:
  - i. Failing to implement the Student's IEP by failing to appropriately modify the Student's general education assignments or quizzes;
  - ii. Failing to implement the Student's IEP by failing to appropriately modify the Student's grading;
- b. Whether the District violated the IDEA and denied the Student FAPE by proposing to place the Student in a self-contained classroom effective February 10, 2014, with the District's proposed IEP;
- c. And, whether the Parent is entitled to her requested remedies:
  - i. Appropriate modification of the Student's general education assignments or quizzes in conformity with the Student's IEP;
  - ii. Appropriate modification of grading in conformity with the Student's IEP;
  - iii. Maintaining the Student in her current educational placement (four periods per day in general education classrooms with an educational assistant, two periods per day in a resource room for language arts and math);
  - iv. Or other equitable remedies, as appropriate.

See Second Prehearing Order entered May 13, 2104.

## FINDINGS OF FACT

1. At all times material to resolution of the issues herein, the Student attended school in the District, and was a student eligible for special education and related services under the IDEA category of other health impairment (OHI).
2. The Student's last triennial reevaluation under the IDEA was conducted during late 2012, and resulted in a Reevaluation Report dated December 5, 2012. Exhibit P6. The Student was in seventh grade at that time.
3. The Student entered eighth grade during the 2013-2014 school year. The Student's Individualized Education Program (IEP) in effect when she began eighth grade was adopted on May 29, 2013, at the end of seventh grade. Exhibit P3.
4. The IEP adopted May 29, 2013, (the May 2013 IEP) provided for the Student to receive specially designed instruction (SDI) in reading, written language, math, and social skills. It also

provided for the Student to receive the following accommodations and modifications as part of the services necessary for her to obtain an educational benefit from her instruction:

Shortened assignments, limited multiple choice, rephrase test questions and/or directions, simplify test wording, read class materials daily, a human reader, a note taker, testing over critical standards, extra time to complete assignments, extra time on quizzes and tests, read class materials orally, modify/repeat directions, preferential seating, testing in a separate location as necessary, utilizing oral responses to assignments/tests, allow use of a calculator, spelling and grammar devices, a computer with word prediction for longer writing assignments, provision of homework lists, a behavior contract/plan, provision of a daily assignment list, modified grading, an adult note taker in general education academic classes, digital access to reading materials, access to a computer for longer written assignments (two sentences plus), and access to a printer for written assignments completed on a computer.

Exhibit P3p8.

5. The IEP also required for a paraeducator for the Student to provide the accommodations and modifications identified in her IEP under the supervision of a general education teacher. Exhibit P3.

6. The May 2013 IEP placed the Student in a general education classroom or setting for 69.35% of her school day. The Student spent the remaining 30.65% of the school day in a special education resource room for instruction. Exhibit P3.

7. With respect to the Student's academic instruction, under the May 2013 IEP the Student attended a general education classroom for science and history. The Student attended a special education resource room for math and language arts (reading and writing). Exhibit P3.

8. On January 7, 2014, the Student's IEP team, including the Parent, determined it would amend the Student's May 2013 IEP to include a social skills course twice each week in a special education extended resource room.<sup>3</sup> Exhibit P2.

9. The Student's IEP team held a meeting on either February 10 or 11, 2014.<sup>4</sup> The Parent attended the IEP meeting as a member of the team. Exhibit D4p12. While the February 2014 IEP was identified as an "IEP Annual Review," (Exhibit D4p1) it had been less than a year since the adoption of the May 2013 IEP, and the amendment of that IEP in January 2014.

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<sup>3</sup> The parties stipulated that the District's special education extended resource room is also commonly identified as a self-contained classroom. The terms "extended resource room" and "self-contained classroom" will be used interchangeably in this Final Order.

<sup>4</sup> The actual IEP is dated February 10, 2014. Exhibit D4p1. However, a Prior Written Notice (PWN) dated February 11, 2014, references "our meeting today." Exhibit D11p1. For the purposes of this Final Decision, however, whether the meeting took place on February 10<sup>th</sup> or 11<sup>th</sup> is not legally material to resolution of the issues presented. This IEP will be identified as the February 2014 IEP for purposes of this Final Order.

10. The February 2014 IEP provided SDI for math, reading, social skills, and written language. It provided for many, but not all, of the accommodations and modifications required under the May 2013 IEP. Compare, Exhibits P3p8 and D4p9. The February 2014 IEP did not include any requirement for provision of a human reader or note-taker, homework lists, a behavior plan/contract, or daily assignment lists. However, the February 2014 IEP added individualized/small group instruction, and text-to-speech.

11. The February 2014 IEP placed the Student in a special education self-contained classroom for 62.21% of her school day. Under this IEP, all of the Student's academic instruction, language arts, math, science, and history, would be provided in a self-contained classroom. Exhibit D4pp.10-11.

12. The Student would spend the remaining 37.79% of the school day in a general education setting for nonacademic instruction or learning. Exhibit D4p11.

13. The February 11, 2014 PWN included a section entitled "Description of each evaluation procedure, test, record, or report we used or plan to use as the basis for taking this action." The section concludes by identifying those materials:

Classroom based (sic) assessments, previous educational data and evaluations, and current progress toward IEP goals were used to inform the team regarding decisions for the [S]tudent's IEP and educational placement.

Exhibit D11p2.

14. The Parent disagreed with the proposed February 2014 IEP, and filed a Due Process Hearing Request (the Complaint) on February 20, 2014.

15. Julie Causton, Ph.D., appeared as a witness for the Parent. Dr. Causton's curriculum vita, or statement of education, training, and experience, appears in the record as Exhibit P10. After consideration of Dr. Causton's curriculum vita and testimony at hearing, it is found as fact that Dr. Causton is qualified to provide expert opinion testimony on matters of inclusion of students eligible for special education in general education classrooms, and accommodations and modifications for instructional materials and curriculum for those students.

16. Dr. Causton observed the Student for one full school day on May 29, 2014, when the Student was in eighth grade. Dr. Causton also spoke with the individuals and reviewed the documentation identified at Exhibit P11p1. Based upon these sources of information and her education, training, and experience, Dr. Causton authored what she identified as an "Independent Educational Evaluation of [the Student]." Exhibit P11.

17. During her testimony, Dr. Causton was questioned regarding her opinion of multiple documents all related to the District's modification of curricular materials for the Student pursuant to the requirements of the May 2013 IEP. Exhibits P69, P76, P84, P90, and D37-D38.

18. Dr. Causton opined, and it is found as fact, that the District's modifications to these curricular materials were not appropriate modifications to address the effects of the Student's disabilities on her learning and education.

19. The District also presented evidence regarding the modifications and accommodations it provided to the Student in compliance with the requirements of the May 2013 IEP. Exhibits D9, D29, D39-D40, and P125.

20. After review of the District's evidence relevant to establishing it implemented appropriate modifications and accommodations as required under the May 2013 IEP, it is found as fact that, with the exception of the curricular materials identified in Finding of Fact 17, the modifications and accommodations were generally in compliance with the May 2013 IEP, with the following exception.

21. Roger Campbell is a District resource room teacher and was the Student's IEP case manager during the 2013-2014 school year.

22. The May 2013 IEP required the Student's case manager, Mr. Campbell, to "consult biweekly with general education teachers to assist with standards-based instruction and monitoring progress towards meeting IEP goals and content area standards." Exhibit D3p9.

23. While there is conflicting evidence of record (Exhibit P120p.1: December 2, 2013 Email from Whipple to District staff; Exhibit D50; Testimony of Campbell; Testimony of Whipple) after careful review of that evidence, it is found as fact that Mr. Campbell did not begin to meet with the Student's general education teachers pursuant to the May 2013 IEP until October 28, 2013.

## CONCLUSIONS OF LAW

### Jurisdiction and Burden of Proof

1. The Office of Administrative Hearings (OAH) has jurisdiction over the parties and subject matter of this action for the Superintendent of Public Instruction as authorized by 20 United States Code (USC) §1400 *et seq.*, the Individuals with Disabilities Education Act (IDEA), Chapter 28A.155 Revised Code of Washington (RCW), Chapter 34.05 RCW, Chapter 34.12 RCW, and the regulations promulgated thereunder, including 34 Code of Federal Regulations (CFR) Part 300, and Chapter 392-172A Washington Administrative Code (WAC).

2. The burden of proof in an administrative hearing under the IDEA is on the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528 (2005). Accordingly, in this case the Parent bears the burden of presenting sufficient evidence to support a conclusion the District violated the IDEA and denied the Student FAPE with respect to all issues raised in Cause No. 2014-SE-0008.

### The Individuals with Disabilities Education Act (IDEA)

3. The IDEA and its implementing regulations provide federal money to assist state and local agencies in educating children with disabilities, and condition such funding upon a state's compliance with extensive goals and procedures. In *Bd. of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 102 S. Ct. 3034 (1982) (*Rowley*), the Supreme Court established both a procedural and a substantive test to evaluate a state's compliance with the Act, as follows:

First, has the state complied with the procedures set forth in the Act? And second, is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits? If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more.

*Rowley, supra*, 458 U.S. at 206-207 (footnotes omitted).

4. A "free appropriate public education" (FAPE) consists of both the procedural and substantive requirements of the IDEA. The *Rowley* court articulated the following standard for determining the appropriateness of special education services:

[A] "free appropriate public education" consists of educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child "to benefit" from the instruction. Almost as a checklist for adequacy under the Act, the definition also requires that such instruction and services be provided at public expense and under public supervision, meet the State's educational standards, approximate the grade levels used in the State's regular education, and comport with the child's IEP. Thus, if personalized instruction is being provided with sufficient supportive services to permit the child to benefit from the instruction, and the other items on the definitional checklist are satisfied, the child is receiving a "free appropriate public education" as defined by the Act.

*Rowley*, 458 U.S. at 188-189.

5. For a school district to provide FAPE, it is not required to provide a "potential-maximizing" education, but instead a "basic floor of opportunity" that provides "some educational benefit" to the Student. *Rowley*, 458 U.S. at 200 - 201. A "[d]istrict must provide Student a FAPE that is 'appropriately designed and implemented so as to convey' Student with a 'meaningful' benefit". *J.W. v. Fresno Unified School Dist.*, 626 F.3d 431, 432 - 433, (9<sup>th</sup> Cir. 2010); *see also J.L. v. Mercer Island School Dist.*, 575 F.3d 1025, 1038, n. 10, (9<sup>th</sup> Cir. 2009).

6. Procedural safeguards are essential under the IDEA:

Among the most important procedural safeguards are those that protect the parents' right to be involved in the development of their child's educational plan. Parents not only represent the best interests of their child in the IEP development process, they also provide information about the child critical to developing a comprehensive IEP and which only they are in a position to know.

*Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 882 (9<sup>th</sup> Cir. 2001).

*Did the District violate the IDEA and deny the Student FAPE by proposing to place the Student in a self-contained classroom effective February 10, 2014, with the District's proposed IEP?*

7. The Student's May 2013 IEP placed the Student in a general education setting for 69% of the school day. However, by February 10, 2014, barely eight months later, the District proposed placing the Student in a self-contained special education classroom for 62% of the school day.



With respect to academic instruction, the proposed IEP doubled the number of periods per day the Student would be in a special education setting; from two periods per day for language arts and math under the May 2013 IEP, to four periods per day for language arts, math, science, and history under the February 2014 proposed IEP.

8. Case law clearly establishes the proposition that prior to any substantial or material change in a student's educational placement, a school district should conduct a reevaluation, particularly when the new placement is a more restrictive placement. *Board of Educ. of City of White Plains*, 20 IDELR 1475 (SEA NY 1994); *Brimmer v. Traverse City Area Pub. Sch.*, 22 IDELR 5 (W.D. Mich. 1994). This is also the position of the Office of Civil Rights (OCR). *Kelso (WA) Sch. Dist. No. 4*, 20 IDELR 1003 (OCR 1993); *Mobile County Sch. Dist.*, 19 IDELR 519 (OCR 1992). In *Kelso*, OCR remarked that the Office of Superintendent of Public Instruction (OSPI) for Washington State also investigated the same issue OCR investigated pursuant to a state citizen's complaint. OSPI "determined that the [Kelso School] District failed to comply with certain State special education requirements, including failing to evaluate the students prior to changing their placements." *Kelso, supra*.

9. Case law also supports a conclusion that a student should be reevaluated when there is a substantial change in the student's academic performance or disabling condition. *Corona-Norco Unified Sch. Dist.*, 22 IDELR 469 (SEA CA 1995); *Reserve Indep. Schs.*, 112 LRP 6241 (SEA NM 2012); *Board of Educ. of City of White Plains*, 20 IDELR 1475 (SEA NY 1994).

10. In its Post-Hearing Brief, the District asserts that changing the Student's math and language arts instruction from a resource room to an extended resource room or self-contained classroom does not implicate the least restrictive environment provisions of the IDEA. This is because a resource room and a self-contained classroom are both special education placements, and therefore access to general education peers is exactly the same. District Post-Hearing Brief at p. 10. The District appears to be arguing that since only students eligible for special education attend resource rooms and self-contained classrooms, those two educational placements occupy the same position on the continuum of educational placements, which ranges from 100% of the time in a general education classroom to highly restrictive placements like residential institutions or home-schooling placements. In other words, because no general education students attend resource rooms or self-contained classrooms, both placements offer the same opportunity to interact with general education students; zero opportunity.

11. Fortunately, resolution of the above issue does not require consideration of the District's position on this point. And while dicta, it is worth noting that the District's argument grossly simplifies the legal analysis of LRE.

12. Similarly, the District argues that moving from a resource room to a self-contained classroom does not constitute a change in the Student's educational placement and cannot be considered a more restrictive environment, citing *In the Matter of Tacoma School District*, 114 LRP 10105 (SEA WA 2014). The District's reliance upon the holding in *Tacoma* is very misplaced. The conclusion cited by the District was the result of a prehearing order addressing the issue of a student's stay-put placement during the pendency of a due process hearing.<sup>5</sup> The

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<sup>5</sup> A copy of the prehearing order in *Tacoma* may be obtained by request with Administrative Resource Services at the Washington State Office of Superintendent of Public Instruction (360) 725-6320.

prehearing order did conclude that moving that student from a learning resource center to an adjustment classroom did not constitute a change in that student's educational placement, and did not violate the student's stay-put. But a careful review of the legal analysis in the prehearing order reveals that this conclusion was based upon a fact-intensive legal analysis of the specific circumstances in that particular case. The holding in *Tacoma* cannot be generalized outside of the specific facts and circumstances of that case as the District argues herein. If there is a generalization to be made from the holding in *Tacoma* it is that labels are not controlling. Whether a placement is identified as a resource room, extended resource room, self-contained classroom, learning resource center, or adjustment classroom is legally immaterial. Rather, it is the facts in each particular case which will establish the legal character of an individual student's educational placement.

13. The first part of the legal issue that must be adjudicated herein is whether the District's proposed placement under the February 2014 IEP constitutes a substantial or material change in the Student's educational placement from the Student's May 2013 IEP.

14. It is manifest that changing a student's educational placement from spending 69% of a school day in a general education setting to spending 62% of a school day in a self-contained classroom constitutes a substantial and material change in that student's educational placement. Reaching any other conclusion is simply legally untenable. Perhaps no principle is more fundamental to the IDEA than the primacy and critical importance of educating students eligible for special education with general education students to the maximum extent appropriate. The February 2014 IEP essentially flips the Student's education upside down, transforming the Student from a predominately general education student with appropriate modifications, accommodations, and instructional support, to a student isolated from her general education peers for a majority of the school day. Accordingly, it is concluded that the District's proposed February 2014 IEP constituted a substantial and material change to the Student's educational placement under her May 2013 IEP.

15. The second part of the legal issue that must be adjudicated is did the District reevaluate the Student prior to proposing to change in the Student's educational placement with the February 2014 IEP.

16. In the Prior Written Notice dated February 11, 2014 which informed the Parent that the District was proposing to implement the February 2014 IEP, there is a section entitled "Description of each evaluation procedure, test, record, or report we used or plan to use as the basis for taking this action." The section states "[c]lassroom based (sic) assessments, previous educational data and evaluations, and current progress toward IEP goals were used to inform the team regarding decisions for the [S]tudent's IEP and educational placement." Exhibit D11 To any extent the District might argue it conducted a reevaluation of the Student prior to substantially and materially changing the Student's educational placement, that argument would have to be premised upon the materials identified in this section of the PWN.

17. Procedures for evaluations under the IDEA are set out at WAC 392-172A-03020 *et seq.* See also, 34 CFR § 300.303 *et seq.* Legal requirements for an evaluation report are set out at WAC 392-172A-03035. After review of the applicable legal requirements, it is clear the materials identified in the PWN do not constitute a reevaluation of the Student. Further, a school district cannot reevaluate a student absent the consent of a parent unless the district requests a due process hearing to override the parent's refusal to consent. WAC 392-172A-

03000. See also 34 CFR § 300.300. There is absolutely no evidence upon which to find the Parent consented to a reevaluation of the Student in connection with the proposed February 2014 IEP. It is concluded the District did not reevaluate the Student in connection with proposing to substantially and materially changing the Student's educational placement with the February 2014 IEP.

18. The last part of the legal issue that must be adjudicated is whether, under the facts in this case, the District should have reevaluated the Student before proposing an IEP that so substantially and materially changed her educational placement.

19. More than a substantial and material change, the District's proposed February 2014 IEP contemplated a truly fundamental change in the nature of the Student's educational placement. Given this, the reasons for requiring the District to appropriately reevaluate the Student before implementing such a change are all the more compelling. Decisions involving students eligible for special education and related services under the IDEA are premised on a careful consideration of the individual circumstances of a given student. The IDEA recognizes the unique nature of each and every student. This recognition only serves to increase the necessity that a school district have current, reliable, and comprehensive information about a student prior making a decision to fundamentally change that student's educational placement. That information is generated through the reevaluation process. Such is not the case with the District's February 2014 IEP. It is concluded that under the facts in this case, the District should have reevaluated the Student prior to proposing the February 2014 IEP, and the District's failure to do so was a procedural violation of the IDEA.

20. Procedural violations of the IDEA amount to a denial of FAPE only if they:

- (I) impeded the child's right to a free appropriate public education;
- (II) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents' child; or
- (III) caused a deprivation of educational benefits.

20 USC §1415(f)(3)(E)(ii); *see also* WAC 392-172A-05105(2); 34 CFR §300.513.

21. The District's failure to reevaluate the Student prior to proposing the February 2014 IEP clearly denied the Parent the opportunity to participate in the decision-making process regarding the provision of FAPE for the Student. Without reevaluating the Student, the Parent was deprived of her opportunity to provide input into the reevaluation, consider the results of such a reevaluation, and obtain and offer additional information or evaluations in support of her position that the Student's educational placement should not be changed. The District's failure also impeded the Student's rights to FAPE. Implementation of the proposed February 2014 IEP would have fundamentally altered the Student's opportunity to receive FAPE in her LRE. The District's procedural violation of the IDEA necessitated the Student remaining in her prior placement pursuing the same goals and objectives for now far in excess of one school year; she has been pursuing the same goals and objectives since May 2013. This more likely than not has deprived the Student of educational opportunities to work on new goals and new skills. After careful review and consideration, it is concluded that the District's procedural violation of the IDEA has denied the Student FAPE, impeded the Parent's opportunity to participate in the decision-making process, and clearly warrants an award of remedies.

22. Much time and testimony was spent at hearing regarding what is the Student's LRE, and whether the proposed February 2014 IEP was not appropriate because it did not place the Student in her LRE. Given it has been concluded that the District should have reevaluated the Student prior to proposing a substantial and material change in the Student's educational placement, and that the failure to do so violated the IDEA and warrants an award of remedies, it is not necessary to consider the issue of whether the educational placement proposed in the February 2014 IEP was or was not the Student's LRE.

Did the District violate the IDEA and deny the Student FAPE by failing to appropriately modify the Student's general education assignments or quizzes during the 2013-2014 school year?

23. The evidence regarding whether the District's efforts to modify the Student's general education assignments or quizzes resulted in *appropriate* modifications comes principally from the testimony of Dr. Causton. While District staff testified at length about the modifications they made to the Student's assignments, they provided little testimony going to *how* those modifications were appropriate for the Student's educational needs. However, Dr. Causton's testimony was limited to consideration of a relatively few pieces of curricular material over the course of an entire school year. The curricular materials regarding which Dr. Causton provided her expert opinion have been found to have been inappropriately modified for the Student. In addition, the District did not implement the May 2013 IEP's requirement that Mr. Campbell meet biweekly with the Student's general education teachers under October 28, 2013. It is concluded that the District failed to fully implement the Student's May 2013 IEP with respect to appropriately modifying her curricular materials, including assignments and quizzes. That conclusion, however, is not the end of the legal analysis.

24. The seminal case in the Ninth Circuit on failure to implement a student's IEP is *Van Duyn v. Baker School District*, 502 F.3d 811, 107 LRP 51958 (9<sup>th</sup> Cir. 2007). In *Van Duyn*, the court held that not every failure by a school district to implement an IEP results in a violation of the IDEA. The court referenced language in the IDEA that defines FAPE as "special education and related services that are provided in conformity with the [student's] individualized education program." 20 USC § 1401(9)(d). Based upon this definition, the court in *Van Duyn* concluded there is no statutory requirement of perfect adherence to an IEP, and went on to hold that only a *material* failure to implement an IEP will result in a violation of the IDEA. It defined a material failure as "more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP." Accordingly, the issue for resolution under the facts in this case is whether the District's failure to fully implement the Student's May 2013 IEP with respect to appropriately modifying her curricular materials, including assignments and quizzes, constitutes a material failure to implement the Student's IEP.

25. In beginning this analysis, it is important to note that the Student's May 2013 IEP does not on its face require that every single piece of the Student's curricular materials, including assignments and quizzes, be modified, or that every single accommodation be provided in all circumstances. A determination of whether a particular piece of curricular material needs to be modified and how that modification should be accomplished, and whether a particular accommodation needs to be provided in a given circumstance, must rest with the professional skill and judgment of the educational professionals charged with implementing a student's IEP.

26. While the informed opinion of Dr. Causton was the basis for finding that some of the curricular materials modified by the Student's teachers were not *appropriately* modified, the

Parent appears to argue it can be concluded from this that the District failed to appropriately modify some larger number, amount, or quantum of curricular material(s) which Dr. Causton did not review and/or on which she did not offer her expert opinion. The District has offered evidence establishing it did modify curricular materials and did provide accommodations with respect to materials not addressed by Dr. Causton. After careful review and consideration of the evidence, it must be concluded that the evidence is insufficient to reach a more general conclusion that, based upon the curricular materials addressed by Dr. Causton's expert opinions, the District materially failed to implement the modifications and accommodations required under the Student's May 2013 IEP.

27. The failure of the Student's case manager to begin meeting with the Student's general education teachers until October 28, 2013, warrants further review. Standing alone, this failure could constitute more than a minor discrepancy in implementing the Student's IEP. But when considered in light of all the services, modifications, and accommodations the District was required to provide under the Student's May 2013 IEP, and the educational progress which the Parent asserts the Student made over the course of the 2013-2014 school year (See Parent's Closing Brief at pp. 1-2), an assertion which will be accepted as true for resolution of this legal issue, the failure to timely begin meetings with general education teachers requires more review. While that failure is certainly not condoned or minimized, it appears to have had little or no demonstrable impact on the Student's ability to obtain an educational benefit during the 2013-2014 school year. Accordingly, it is concluded under the facts in this case that the failure to begin meetings until October 28, 2013, was not a material failure to implement the Student's May 2013 IEP, and therefore does not constitute a violation of the IDEA.

*Did the District violate the IDEA and deny the Student FAPE by failing to appropriately modify the Student's grading during the 2013-2014 school year?*

28. A review of the evidence regarding this issue compels a conclusion that the Parent has not carried her burden to establish a material failure on the part of the District to implement this requirement under the Student's May 2013 IEP. There is even less evidence regarding this issue than the issue of failing to appropriately provide modifications to curricular materials for Student. And as discussed above, any minor discrepancy to implement this requirement does not appear to have had a demonstrable impact on the Student's opportunity to obtain an educational benefit during the school year.

The Parent's Requested Remedies

29. The Parent has requested as a remedy for the District's denial of FAPE regarding the proposed February 2014 IEP that the District be ordered to maintain the Student in the educational placement from her May 2013 IEP; four periods per day in general education classrooms with an educational assistant or aide, and two periods per day in a resource room for language arts and math. Under the facts in this case, the Parent's requested remedy is appropriate and will be granted with the following conditions.

30. The District failed to reevaluate the Student prior to proposing to substantially and materially change her educational placement. In so doing, the District neglected to first obtain the current, reliable and comprehensive information which is absolutely necessary to make an informed and individualized placement decision. But it is the nature of any student that over time as the student grows and matures academically, socially, and emotionally, the student's

educational needs will change. All students, including students eligible for special education and related services, are dynamic individuals. So it would not be appropriate to assume the Student's educational needs will not change over time. Given this, it is concluded that the District shall maintain the Student's in her current educational placement until her next triennial reevaluation, which will be due in December 2015, approximately one calendar year from entry of this Final Order. Upon completion of the Student's next triennial reevaluation, the Student's IEP team may consider the results of the reevaluation and make any changes to the Student's educational placement in compliance with the procedures of the IDEA. If the Parent disagrees with the IEP team's decision, she will be free to file another request for due process hearing.

31. So it is clear for the parties, an order to maintain the Student in her current educational placement does not mean that no amendments or changes may be made to the Student's IEP between entry of this order and the Student's next triennial reevaluation. For example, the Student's IEP team is free to amend or develop new IEP goals and objectives for the Student should this become appropriate or the Student meets her current goals and objectives. The Student's IEP team could amend or change the IEP to provide new or additional services should that become appropriate. What the District may not do until the next triennial evaluation is complete, and only then if it is determined appropriate, is remove the Student from her four periods per school day of general education classes.

32. The Parent's Closing Brief included a request for an order that the District provide training for "all teachers" regarding inclusion, accommodations, and modifications. Parent's Closing Brief at pp. 3, 44. However, it is unclear if this reference to "all teachers" is intended to identify all of the teacher's responsible for providing the Student's IEP services, or all teachers in the District. With respect to the latter, the evidence of record does not support such a District-wide remedy. With respect to the former, it is concluded the Parent has not presented sufficient evidence regarding what specific program or training would be appropriate, the duration of any such training or program, or other specifics which would allow a reasonably well articulated order to be set forth for the District. This requested remedy is denied. However, the District is now well aware of this issue of providing appropriate modifications and accommodations for this Student, and would be well-advised to provide whatever training is necessary for District staff.

33. All arguments raised by the parties have been carefully considered. Any argument not expressly discussed or addressed herein is determined to be without legal merit.

### ORDER

The Central Valley School District violated the Individuals with Disabilities Education Act and denied the Student a free appropriate public education by proposing to substantially and materially change the Student's educational placement without first conducting a reevaluation of the Student.

The District shall maintain the Student in the Student's current educational placement in accordance with the above Conclusions of Law until such time as the Student's next triennial reevaluation is complete in December 2015.

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Signed at Seattle, Washington on December 6, 2014.



Matthew D. Wacker  
Administrative Law Judge  
Office of Administrative Hearings

**Right To Bring A Civil Action Under The IDEA**

Pursuant to 20 U.S.C. 1415(i)(2), any party aggrieved by this final decision may appeal by filing a civil action in a state superior court or federal district court of the United States. The civil action must be brought within ninety days after the ALJ has mailed the final decision to the parties. The civil action must be filed and served upon all parties of record in the manner prescribed by the applicable local state or federal rules of civil procedure. A copy of the civil action must be provided to OSPI, Administrative Resource Services.

**CERTIFICATE OF SERVICE**

I certify that I mailed a copy of this order to the within-named interested parties at their respective addresses postage prepaid on the date stated herein. *mgw*

Parent

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cc: Administrative Resource Services, OSPI  
Matthew D. Wacker, Senior ALJ, OAH/OSPI Caseload Coordinator